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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re	Chapter 9
City of Detroit,	Case No.: 13-53846
Debtor,	Hon. Steven W. Rhodes
William Ochadleus, <i>et. al.</i>	
Appellants	

SECOND AMENDED MOTION FOR LIMITED STAY PENDING APPEAL

The Ochadleus Appellants file this Second Amended motion (“Motion”), pursuant to Federal Rule of Bankruptcy Procedure 8005, 9013 and 9014 for a limited stay pending appeal of this Court’s Order (Doc. 8272) Confirming the City’s Eighth Plan of Adjustment (Doc. 8045) entered November 12, 2014. A statement of concurrence was sought of the opposing counsel to this Motion in an email on November 18, 2014, to the attorney of record Ms. Heather Lenox and the City responded that they do not concur to this Motion.

November 19, 2014

/s/ Jamie S. Fields
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EXHIBIT 1

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

City of Detroit,

Debtor,

William Ochadleus, *et. al.*

Appellants

Chapter 9

Case No.: Case No. 13-53846

Hon. Steven W. Rhodes

ORDER

For the reasons stated in the Motion for Limited Stay Pending Appeal filed this date, the Court directs the following:

1. The Motion for Limited Stay Pending Appeal is GRANTED.

EXHIBIT 2

UNITED STATES BANKRUPTCY COURT
Eastern District of Michigan

In re: City of Detroit

Chapter: 9

[Set forth here all names including married, maiden, and trade names used by debtor within last 8 years.]

Case No.: 13-53846

Debtor(s)

Judge: Steven W. Rhodes

Address 2 Woodward Ave. Suite 1126
Detroit, Michigan 48226

Last four digits of Social Security or

Employer's Tax Identification (EIN) No(s) (if any): _____

NOTICE OF: Motion for Limited Stay Pending of Order (Doc. 8272) Confirming Eighth Plan of Adjustment of the City of Detroit's Debts (Doc. 8045)

(Motion or Objection)

Jamie S. Fields has filed papers with the court to Provide Limited Stay of Confirmation Order (Stay all Plan changes proposed for retiree pension benefits).

{relief sought in motion or objection}

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to [relief sought in a motion or objection], or if you want the court to consider your views on the [motion] [objection], within 21 days, you or your attorney must:

1. File with the court a written response or an answer, explaining your position at: ¹

United States Bankruptcy Court
(Mail to correct Court Address
Detroit, Flint or Bay City)

If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above. All attorneys are required to file pleadings electronically.

You must also mail a copy to:
{movant's attorney's name, address and telephone number}
{name and addresses of others to be served}

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Date: 11/18/14

Signature /s/ Jamie S. Fields
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EXHIBIT 3

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

City of Detroit,

Debtor,

William Ochadleus, *et. al.*

Appellants

Chapter 9

Case No.: Case No. 13-53846

Hon. Steven W. Rhodes

BRIEF IN SUPPORT OF MOTION FOR LIMITED STAY PENDING APPEAL

Jurisdiction

1. The Appellants bring this motion pursuant to Rule 8005, 9013 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. A determination of whether to grant a limited stay pending appeal is a core proceeding pursuant to 28 U.S.C. § 157. Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

2. The Appellants seek entry of an order, substantially in the form attached hereto as Exhibit 1, staying the confirmation of the City's Plan Order pending appeal.

Basis for Relief Requested

3. Courts consider the same elements applicable to the grant of a preliminary injunction when determining whether a stay pending appeal should be granted under Bankruptcy Rule 8005, "(1) whether the movant has shown a strong or substantial likelihood of success on the merits; (2) whether the movant has demonstrated irreparable injury; (3) whether the issuance of [a stay] would cause substantial harm to others; and (4) whether the public interest is served by the issuance of [a stay]." *In re Holstine*, 458 B.R. 392, 394 (E.D. Mich. 2011) citing *In re Eagle-Picher Indus.*, 963 F.2d 855, 858-69 (6th Cir. 1992).
4. The Sixth Circuit has adopted a sliding scale with respect to the first two factors. "The probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury [movants] will suffer absent the stay. Simply stated, more of one excuses less of the other." *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir.1991); see also *Service Employees Intern. Union Local 1 v. Husted*, 698 F.3d 341, 343 (6th Cir. 2012) (quoting *Griepentrog*); *In re Smith*, 501 B.R. 332, 335-36 (Bankr. E.D. Mich. 2013) (same). Consistent with this sliding scale approach, the Sixth Circuit has approved a test that provides that a stay is appropriate "where [the movant] fails to show a strong or substantial probability of ultimate success on the merits of his claim, but where he at least shows serious questions going to the merits and irreparable harm which decidedly outweighs any potential harm to the [non-moving party] if [a stay] is issued." *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th

Cir. 1985) (citations omitted); *see also Jones v. Caruso*, 569 F.3d 258, 277 (6th Cir. 2009) (affirming that an injunction may issue upon a showing of “serious questions going to the merits”).

Likelihood of Success on the Merits.

5. The risk of statutory and/or equitable mootness with respect to several issues subject to appeal strongly supports a stay. *See, e.g., In re Adelpia Commc’n Corp.*, 361 B.R. 337, 347-48 (S.D.N.Y. 2007) (“[W]here the denial of a stay pending appeal risks mootting *any* appeal of *significant* claims of error, the irreparable harm requirement is satisfied”) (emphasis in original); *see also Weingarten Nostat, Inc. v. Service Merchandise Co., Inc.*, 396 F.3d 737, 741 (6th Cr. 2005) (noting that the district court below determined that potential mootness of appeal likely established irreparable harm even though the district court denied the stay on other grounds).
6. To be clear, Appellants do not concede that its appeal will be moot. Indeed, the Appellants believe that some relief may be possible notwithstanding the Confirmation Order, and also believe that equitable mootness would be inapplicable here. In particular, the Appellants believe that if the reductions to retiree pensions is overturned on appeal, the City would not be required to spend any additional monies (the City under terms of the Plan is not required to spend any monies from its general fund to its retirement system until 2023 and current benefits are paid from the retirement trusts). And the City cannot show with any certainty the retirement systems future funding needs (post 2023).
7. The Court has stated that it believed that the chances of an appeal succeeding was at 25%. Currently, the favorite team to win the 2015 Super-bowl (Denver Broncos) have 4 to 1 (20%) odds to win the Superbowl. Therefore, there is a reasonable likelihood of prevailing

on the merits. The moving party “need not satisfy all elements, but rather the Court is to balance the factors.” *In re Seidel*, 443 B.R. 411, 413 (Bankr. S.D. Ohio 2011) (“All four factors are not prerequisites but must be balanced”). In essence, a party seeking a stay must ordinarily demonstrate to a reviewing court that there is a likelihood of reversal.

Debtors Will Not Be Substantially Harmed By the Relief Sought

8. In contrast to the substantial irreparable harm that the City of Detroit retirees will suffer absent a stay, the Debtors will suffer no harm.
9. Retirees received their annual Cost of Living Adjustment (COLA) on July 1, 2014. Since the Plan was approved the City has the right to “recoup” 55% of retiree’s COLA’s retroactively to July 1, 2014 (the farther out the effective date is extended the more “recoupment” retirees will suffer and the greater the harm). This will cause substantial harm to many retirees that rely on already meager pensions for sustenance.

The Appeal Presents Substantial Issues of Significant Public Interest

10. All courts who have weighed in to date recognize that the issues here are of great public significance and are substantial. The bankruptcy court also recognized the significant public interest at play in this unprecedented case.
11. Thus, the dispute is not over whether the issues presented affect the public interest but rather whether the Debtors should be allowed to avoid any meaningful appellate review of the unprecedented posture of the State and the City in this matter.

/s/ Jamie S. Fields

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Respectfully Submitted:
November 19, 2014

EXHIBIT 4

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2014, I electronically filed an *Amended Motion for Limited Stay Pending Appeal* and *Proposed Order Granting Stay Pending Appeal* on the City of Detroit with the Clerk of the Court for the United States Bankruptcy Court, Eastern District of Michigan, Southern Division using the ECF System, which will send notification of such filing to all attorneys and parties of record registered electronically, including the following listed parties.

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